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362.FAO 1548-2000 -DO- VS. SURINDER KAUR ETC

363.FAO 1549-2000 -DO- VS. TARLOCHAN SINGH ETC
364.FAO 1550-2000 -DO- VS -DO-
365.FAO 1551-2000 -DO- VS. TARSEM LAL ETC
366.FAO 1552-2000 -DO- VS. VIDYA SHARMA ETC
367.FAO 1553-2000 -DO- VS. WARYAM SINGH ETC
368.FAO 1554-2000 -DO- VS. NAHAR SINGH ETC
369.FAO 1555-2000 -DO- VS. NIRMAL KAUR ETC
370.FAO 1556-2000 -DO- VS. ASSA SINGH ETC
371.FAO 1557-2000 -DO- VS. ASHOK KUMAR ETC
372.FAO 1558-2000 -DO- VS. TARANJIT SINGH ETC
373.FAO 1559-2000 -DO- VS. KRISHAN KUMAR ETC
374.FAO 1560-2000 -DO- VS. BALBIR SINGH ETC
375.FAO 1561-2000 -DO- VS. CHAMKAUR SINGH ETC
376.FAO 1562-2000 -DO- VS. HARINDER PAL SINGH ETC
377.FAO 1563-2000 -DO- VS. CHANDERKANT ETC
378.FAO 1564-2000 -DO- VS. INDERJIT SINGH ETC
379.FAO 1565-2000 -DO- VS. CHANDAN SINGH ETC
380.FAO 1566-2000 -DO- VS. DALIP KAUR ETC
381.FAO 1567-2000 -DO- VS. INDERJEET SINGH ETC
382.FAO 1568-2000 -DO- VS. GURNAM KAUR ETC
383.FAO 1569-2000 -DO- KAMAL KUKREJ ETC
384.FAO 1570-2000 -DO- VS. HARMOHAN KUMAR ETC
385.FAO 1571-2000 -DO- VS. HARBAIL SINGH ETC
386.FAO 1574-2000 -DO- VS. INDERJIT KAUR ETC
387.FAO 1575-2000 -DO- VS. INDER MOHAN LAL ETC
388.FAO 1576-2000 -DO- VS. JEET SINGH ETC
389.FAO 1577-2000 -DO- VS. JOGINDER SINGH ETC

390.FAO 1578-2000 -DO- VS. MALKIAT SINGH ETC

Date of Decision:July ,2006.

CORAM:- HON'BLE MR.JUSTICE J.S.NARANG.

PRESENT:-Mr.ML Sarin,Senior Advocate with
Mr.Hemant Sarin,Advocate,

Mr.SS Chopra,Advocate,
Mr.GS Sandhawalia,Advocate,
Er.Bhupinder Singh,Advocate,
Ms.Nirmaljit Kaur,Advocate,
Mr.HS Giani,Advocate and
Mr.GK Chawla,Advocate;
Mr.ML Saggar,Advocate.
for the appellants- claimants.

Mrs.Daya Chaudhary,Asstt.Solicitor General of India,
Mr.Kamal Sehgal,Senior Panel Counsel,
Mr.MS Guglani,Advocate &
Mr.SK Sharma,Advocate

for the respondent-UOI.

J.S.Narang,J.

The aforesaid appeals have been filed by the claimants for seeking enhancement of compensation and the Union of India has also filed appeals for reduction of compensation as awarded by the Arbitrator.

The aforesaid FAOs would stand disposed of by the instant judgment as the points at issue raised in all the aforestated appeals filed

by the claimants and also those filed by Union of India, where reduction has been claimed, are common.

The similar fact is that agricultural land measuring 398.81 acres had been acquired under the provisions of the Requisitioning and Acquisition of Immovable Property Act,1952 (hereinafter referred to as "the Act"). The aforesaid land comprises of the land falling in different villages i.e. Village Dholewal- measuring 116.421875 acres; Sherpur Khurd-84.65625 acres, Sherpur Kalan- 2.09375 acres, Dhaba-177.671875 acres and Gill-17.97343 acres. The respective area of the agricultural land belonging to the appellants in the aforesaid appeals fell in the aforesaid villages. The total recurring compensation amounting to Rs.5,34,177.90 annually for the total area measuring 398.81 acres was paid up to the date of requisition i.e. March 9,1987. The recurring compensation had been assessed at different rates depending upon the nature of the agricultural land as per the provisions of the Act, as tabulated below:-

Sector	***Area***	***Rate per acres***
A	74.00 acres	Rs.1500/-
B	140.50 acres	Rs.1400/-

Sector	***Area***	***Rate per acres***
C	52.82915 acres	Rs.1300/-
D	131.50 acres	Rs.1200/-

The aforesaid land so requisitioned continued to be in possession of the Army authorities since 1950/1952. Subsequently was acquired by exercising the powers under Section 7 of the Act. Notification dated March 9,1987, issued in Form J was duly published in the State Gazette which came to be the date of acquisition i.e. March 9,1987. It is the averment of the acquiring authority that the owners of the agricultural land had not constructed any structure on the land in question. However, the Union of India constructed the buildings, roads as per the requirement of the defence authorities. The Union of India (defence authorities) computed the compensation as per Section 8(3) of the Act in regard to the property, the requisitioning of which had already been made, by keeping in view that the land in question remained in the same condition as it was at the time of requisitioning of the land. The market value was assessed; the capitalized value of the land based on its rental value was worked out approximately 20x 12: equal to Rs.24000/- per acre. The recurring compensation was being paid @ Rs.1200/- per

acre. However, the higher compensation was worked out by applying the aforesaid principle which varied from Rs.1200/- to Rs.1500/- per acre, depending upon the nature and situation of the land which had been accepted by the claimants from time to time without any protest.

For determining the average rate, the sale deeds vis a vis bearing no. 16295 dated February 2,1987; 16380 dated February 3,1987, 16418 dated February 4,1987 and 16508 dated February 5,1987 had been taken in to consideration. The average rate worked out to be Rs.97524/- say Rs.1 lac per acre for the agricultural land. The sale deeds which had been effected in the vicinity of half kilometer from the land in question were also taken into consideration. A deduction of 1/3rd as required under the law had also been applied as a large chunk of agricultural land had been acquired. Thus the actual rate of the land per acre worked out to be Rs.39,986/-; say Rs.40,000/- per acre. However, Government of India, Ministry of Defence i.e. the competent authority approved the rate at Rs.2,55,170/- by virtue of the authority vested under Rule 9(3) sub clause (iii) of the Requisitioning and Acquisition of Immovable Property Rules, 1953, (hereinafter referred to as "the 1953 Rules"). In view of the above, the claimants had already been awarded much more rates as had been delved upon accordingly and that the excess payment had been

called back.

The aforesaid facts relate to the acquisition but some of the facts which need to be noticed are that in what manner the Government of India, Ministry of Defence, had exercised its power of requisition under the Act. Right of requisition had been exercised by the Ministry of Defence in the year 1950 and the possession thereof had been taken since 1950 and that the rent was payable on chakota convertible into terms of value. The chakota had been regularly paid to the owners. Still the land in question had been acquired by issuing the aforesaid notification. It may be noticed that the nature of the land though remained agricultural but at the time of acquisition the same had become urban property on account of having fallen within the municipal limits. The Special Land Acquisition Collector- cum- Competent Authority made an assessment report dated September 28,1987. Part payment of the compensation had been made to the said authority. It has been noticed by the Tribunal that the payment of compensation was made at one rate to the land owners of one village and the amount was calculated at a specific rate up to rupee and paise. The land owners had executed an agreement in Form L and that the payment was made on account basis. The land owners did not accept the offer of compensation. It was obligatory on the part of the Special Land Acquisition Collector-cum-

Competent Authority to have appointed the Arbitrator but none had been appointed. Resultantly, the petitioner approached this Court by invoking extraordinary jurisdiction under Articles 226/227 of the Constitution of India. A direction had been given and pursuant thereto the Arbitrator had been appointed vide notification dated June 12,1990, but this did not fructify for one reason or the other. Subsequently, another notification dated January 8,1993 had been issued and that the Arbitrator was required to make the award within the time frame as provided under law. But, the same could not be made within time. Thus, the notification dated June 27,1994 had been issued extending the time for making the award up to September 20,1994. The award was made by the Arbitrator on September 8,1994.

The claimants brought on record substantial evidence indicating that the land in question is at a short distance from G.T. Road and further is at a distance of 500 yards from Guru Gobind Singh Tower Complex. Further, the entire surrounding area has been developing very fast into a commercial-cum-industrial area . It has also been brought into evidence that factories/complexes like Metal Fabrics of India, Savitri Tower, Dada Motors, Greatways of India, A.S. Industries etc. have come into existence around the property in question in the year 1981. The

Municipal Corporation had also auctioned certain plots for business and commercial ventures @ Rs.1807/- per square yard and that the said complex is at a distance of 800yards from the land in question. It has also been averred that these complexes have come into existence much before the year 1987. It has also been averred that the rate of transaction of the similar land was Rs.1000/- per square yard but the claim has been staked @ Rs.800/- per square yard by some of the claimants. It has also come on the record that the some of the land owners had submitted their plans for setting up commercial -cum-business ventures (it may be noticed that the land in question was under requisition with the defence authorities and that the owners were being paid chakota and same was being accepted without any protest). The claimants in their own cases appeared as their own witnesses and had also requisitioned the evidence by summoning record from the Municipal Corporation, Ludhiana as well as other record also from the office of Special Land Acquisition Collector. The record pertaining to the shops/land auctioned by the requisite authorities had also been brought on record indicating execution of 30 years lease on December 13,1991.

Union of India i.e. the Ministry of Defence also produced on record documentary as well as oral evidence. Specific emphasis has been

made upon the assessment of the rent of the disputed land, which has been subsequently acquired which had come into possession of the defence authorities and that the assessed rent was duly paid to the owners of the land. The payment of which stands corroborated up to March 9,1987. The rent had been duly accepted without any protest by the concerned claimants. The defence authorities also produced the then Patwari of the area, who had brought the record pertaining to the cases of the applicants and proved the documents accordingly. He also produced Form L pertaining to the respective claimants and further produced sale deeds executed in regard to the land in the vicinity which have been exhibited as Ex. R-14 to R-22 and the site plan has been exhibited as Ex. R-13. The assessment report dated September 28,1997 by the Special Land Acquisition Collector, Jalandhar has been proved as Ex.P4. However, the said witness had stated that 80% of the assessed price has been paid to all the owners of the land but at one stage in cross examination he has stated that the payment up to 55% has been made but controverted this statement subsequently. He has also admitted that the acquired land in question is at a distance of 1-1/2 kilometers from Dholewal Chowk and about ½ kilometer from Sherpur Chowk.

The Arbitrator had drawn an issue upon the pleadings of the

parties, which reads as under:-

> "Whether the compensation awarded by the competent authority is inadequate, if so, then to what amount of compensation the petitioner is entitled from whom? OPP."

The question which has been delved into by the Arbitrator is as to whether the claimants are entitled to the enhancement of the compensation over and above as awarded by the Special Land Acquisition Collector. By considering and taking the view upon the evidence produced before the Arbitrator, the rate of the acquired land situated in Village Dholewal has been derived at Rs.390/- per square yard. However, after making deduction @ 33% for evaluation of larger plots as compared to smaller plots of land referable in the instances, the rate has been culled out as Rs.260/- per square yard. The Arbitrator has not awarded solatium or interest This claim had been refuted by the Government by placing reliance upon a judgment of the Hon'ble Supreme Court rendered in re: *Union of India v. Hari Krishan Khosla, 1993 Suppl. (2) SCC 149,* whereby it has been held that under the Act the claimant is not entitled to solatium and interest. The Hon'ble Supreme Court has laid down the law in this regard. However, in the aforesaid

case the solatium was allowed @ 30% upon the amount of compensation and interest @ 9% because in that case no Arbitrator had been appointed for a period of 16 years. In the case at hand the period is not the same as was under consideration before the Hon'ble Supreme Court. Therefore, no solatium or interest has been allowed by the Arbitrator. However, a direction has been issued that the payment be made within three months from the date of the award, failing which the claimants would be entitled to claim interest upon the amount so payable @ 10% per annum after the expiry of the aforesaid period of three months.

Dissatisfied with the aforestated award, it has been challenged by way of appeals by the claimants. Since the points at issue are similar, therefore, are being disposed of by a common judgment. The claim of the claimants is that the market value of the land in question has been wrongly determined by the Arbitrator as Rs.260/- per square yards. Whereas, the market value cannot be assessed less than Rs.600/- per square yard. It has also been averred that deduction of 1/3rd of the price so determined is not warranted and is not sustainable under law. The interest has also been claimed upon the amount so payable in view of the judgment rendered by the Hon'ble Supreme Court in re: *Hari Krishan Khosla's* case supra.

Learned counsel for the appellant has argued that the requisitioning of the land had taken place in the year 1950 and that the acquisition took place in the year 1987. The competent authority did not appoint any Arbitrator and it was at the instance of the petitioners by way of filing CWP No. 10703 of 1989 which was disposed of vide order dated November 15,1989, the Arbitrator had been appointed by virtue of the notification issued on June 12,1990. But the same came out to be ineffective and subsequently a notification was issued on January 8,1993 vide which the Arbitrator had been appointed and that the award was rendered on September 8,1994. Reference has been made to Exhibits PA to PF relating to the registration of the sale deeds vide which the rate reflected per square yard is Rs.400/- for the year 1985-86. It has also been contended that the Municipal Corporation, Ludhiana had also auctioned the areas for construction of shops etc. measuring about 200 square yards @ Rs.1800/- per square yard, The auction took place on March 19,1979 and December 10,1981 when the reserved rate was notified as Rs.1807/- per square yard. The entire area fell within the Municipal area before the acquisition, therefore, the market value of the land in question rose phenomenally. This fact has been completely ignored by the Arbitrator. The area which falls within the Municipal

limit, though may be used for agricultural purpose, the potential of the same would rise much higher than that of the normal agricultural land. The utilisation of the land comes under a change and the area becomes salable in shorter chunks and not in bigger chunks. Thus, the potential of the area in question became comparable with the reserved rate notified by the Municipal Corporation in the vicinity, which came to be Rs.1800/- per square yard. However, the formula of applying deduction @ 33% would not be sustainable as the area belonging to the claimants could not be defined as bigger chunks as the need of the acquiring authority may be big or less but this would not affect the claim of the claimants whose area is less and could be sold in smaller chunks having fallen within the Municipal limits. No reason has been specified either by the Special Land Acquisition Collector or by the Arbitrator in applying the deduction of 1/3rd from the value so determined.

Learned counsel for the appellants has placed reliance upon a Division Bench judgment of this Court rendered in re: *Lakshmi Dass and others v. The Punjab State and others*, 1977 PLJ 464, by making emphasis upon the observations as contained in paras 5 to 9 which read as under:-

"5. On behalf of the appellants, the core of their

attack is directed against the classification of the land for revenue purposes and the valuation thereof on that basis. It has been forcefully contended that the acquired land had patent and obvious potentialities for development primarily as residential sites and equally for commercial and industrial purpose. Counsel, therefore, contended that the determination of the compensation on the basis of the land's agricultural quality was unwarranted and indeed irrelevant to its actual market value.

6. There is substantial merit in the common contention raised on behalf of the appellants. The favourable situation of the acquired land is indeed not in serious dispute. As would appear hereinafter this area had come within the municipal limits of the town f Ludhiana more than a year prior to the notification under section 4 of the Act. That the city of Ludhiana is one of the principal industrial cities of the State of Punjab was not disputed before us. Nor is there any manner of doubt that the said town has been a developing and expanding industrial centre ever since the late fifties.

7. The potentialities for the development of the acquired land are further evidenced from the admitted fact that this very area was earlier sought to be acquired by the Ludhiana Improvement Trust itself by a notification dated the 7th of March, 1962 . The Trust obviously had sought to acquire this land for the purpose of residential and industrial development of the town as it lay not only on the fringe of the developing city of Ludhiana but had in fact been incorporated within its municipal limits itself. Though this proposed acquisition did not materalise, it nevertheless is a pointer to the potentiality of this area for development for other than agricultural purposes.

8. The learned Additional District Judge himself noticed the advantageous situation of the land as regards its market value. This is not the subject matter of challenge on behalf of the respondent-State and it suffices to quote from the judgment under appeal as regards the surrounding areas of the acquired land:-

"So far as the general situation of the acquired land is concerned it had been brought in the evidence of the various

P.Ws., that the land is surrounded by residential abadis on all sides. On the east of the acquired land there is a Water-Works Building and the government College Hostel for Boys. On the southern side there is Agricultural University campus. On the north is the residential house of Sajjan Singh Lambardar and village abadi of Rajpura and on the western side the Harijan Colony is located. In fact it was admitted by Gurdev Singh Patwari, PW-10 that at the time of the acquisition there were several residential colonies near the acquired land."

It is evident from the above that the area under acquisition had assumed primarily an urban character and and had indeed ceased to be rural or agricultural in nature. Its potentiality for development as residential colonies within the municipality limits of Ludhiana is thus too patent to deserve any great elaboration.

9. One aspect which seems to have been missed by the Court below is the virtually admitted fact that nearly a year prior to the notification under section 4 of the Act, the area under acquisition had been included within the

municipal limits of Ludhiana. Lakhmi Dass one of the appellants in his petition under Sections 18 and 30 of the Act categorically averred in para 3 thereof that the price of the land has risen materially because it had come within the municipal limits and indeed those limits now extended far beyond the revenue estate of village Rajpura within which the area lay. It was also highlighted that this factor had entirely been missed by the Collector in determining the compensation. Learned counsel for the respondents was unable to show any categorical contravention of the aforesaid pleadings. This apart, PW 24 Madan Lal one of the claimants forthrightly stated in his examination-in-chief that at the relevant time the acquired land was within municipal limits of Ludhiana and he was not at all challenged by way of cross examination on this point. It has been stated at the bar that in fact the notification bringing the area within the municipal limits was issued nearly a year earlier in January, 1962. It inevitably flows from this that a presumption would arise in favour of the claimants that the acquired land was primarily of an urban character.

This has not even remotely been rebutted on behalf of respondent-State. Indeed there is substance in the argument of the learned counsel for the appellants that this aspect of the area having been included in the municipal limits a year before the notification under section 4 seems to have been missed entirely even for the purpose of fixing the valuation of the land.

Further reliance has been placed upon the dicta of the Hon'ble Supreme Court rendered in re: *The Collector, Raigarh v. Dr. Harisingh Thakur and another* AIR 1979 SC 472 with a specific reference to paras 5 & 6 at page 473 and 474, which read as under:-

"5. The question as to whether a land has potential value as a building site or not is primarily one of fact depending upon several factors such as its condition and situation, the user to which it is put or is reasonably capable of being put, its suitability for building purposes, its proximity to residential, commercial and industrial areas and educational, cultural or medical institutions, existing amenities like water, electricity and drainage and the possibility of their future extension, whether the nearby town is a developing or

a prospering town with prospects of development schemes and the presence or absence of pressure of building activity towards the land acquired or in the neighbourhood thereof. In the instant case, the fact that the land in question has a great potential value as a building site is evident not only from the observations made by the Special Land Acquisition Officer himself in his aforesaid award to the effect that the land has assumed semi-abadi site but also from the following observations made in his judgment dated December 20,1958 by the Additional District Judge who had the advantage of inspecting the site.--

"The land abuts Raigarh town. It is within Municipal limits and the nazul perimeter extends up to it. To the East of the plot there are some kutcha buildings and beyond 50 yards there are pucca buildings inhabited by respectable persons. To the North is a municipal road leading to the railway quarters to the West. The west beyond the railway quarters, there is further habitation and the locality is called "Bangla-para" within Municipal limits. The plot did have a potential value as a building site and it is further supported by the fact

that the plot has been used by the Railway authorities for construction of staff quarters thereon though the land was acquired for doubling the railway line."

6. It is also not disputed that the Special Land Acquisition Officer did not lead any evidence worth the name to shown the price of the comparable sites in question and remained content with the production only of the sale statement made by Jujhar Singh,N.A.W.I. Now the sale statement consisted mostly of sales relating to the year 1951 which is not relevant for the question in hand. Moreover the sale statement by itself without examining either the vendors or the vendees or the persons attesting the sale deeds is not admissible in evidence and cannot be relied upon. The sale deed dated December 14,1956 in favour of Dr.Das for 4,800 square feet of land out of contiguous Khasra No.256 in lieu of Rs.2,000 i.e. at approximately 6-1/2 annas per square foot (which has been relied upon by the Additional District Judge and the High Court) could be taken as a safe guide for determination of the compensation. From the material adduced in the case, it appears that Raigarh is a growing

> town that instead of utilising the land for doubling the railway track, the Railway has built staff quarters thereon, that on three sides of the acquired land, there already existed pucca buildings and on the fourth side, there is a mettaled road. It is also in evidence that some lawyers have put up some constructions near the sites in question. Taking all the facts into consideration, it cannot be said that the basis on which the Additional District Judge and the High Court proceeded is wrong or that the quantum of compensation awarded by the High Court is in any way excessive or exorbitant."

He has also placed reliance upon a judgment of this Court rendered in RFA NO. 149 of 1972 *Smt. Pushpa Devi Chirimar v. The State of Haryana* , decided on November 13,1979, with a specific reference to the observations which read as under:-

> "3. After hearing the counsel for the parties, I am of the view that the submission of the learned counsel for the appellant is well-based. For the land situate within the town of Bhiwani abutting on a road, the sale of about 2 kanals would be a good instance for awarding compensation in this

case. No doubt about the genuineness of this sale is shown. Rather a constant uptrend in prices has been evidenced from the instances of October, November and December 1969 which are shown in the extract prepared by the Court below in para-9 of its judgment."

He has also placed reliance upon a judgment of the Hon'ble Supreme Court rendered in re: Hari Krishan Khosla's case (supra) by making specific reference to para nos.17,20 and 78, which read as under:-

"17.Where the property has been under requisition for a long time, it would deprive the owner of the use of the property and ultimately acquiring the same would amount to fraud on powers as laid down in *H.D.Vora v. State of Maharashtra and others, (1984) 2 SCC 337.*

20. In Civil Appeal Nos.4688-94 of 1989 for 16 years no Arbitrator was appointed. Under exactly similar situation this Court in Civil Appeal Nos.470 and 471 of 1985 dated 11th February,1985 took the view that the award does not call for any interference.

78. This is a case in which for 16 years no Arbitrator was

appointed. We think it is just and proper to apply the principle laid down in *Harbans Singh Shanni Devi and others v. Union of India and others,* Civil Appeal Nos. 1470 and 1471 of 1985, disposed of by this court on 11th February, 1985. The court held as under:-

"Having regard to the peculiar facts and circumstances of the present case and particularly in view of the fact that the appointment of Arbitrator was not made by the Union of India for a period of 16 years, we think this is a fit case in which solatium at the rate of 30% of the amount of the compensation and interest at the rate of 9% per annum should be awarded to the appellants. We are making this order having regard to the fact that the law has in meanwhile been amended with a view to providing solatium at the rate of 30% and interest at the rate of 9% per annum."

He has further placed reliance upon judgment of the Hon'ble Supreme Court rendered in re: *Prabhu Dayal and others v. Union of India*, 1995 Suppl. (4) SCC 221. The relevant para i.e. para no.4 reads as under:-

"4. It is next contended that the appellants are entitled to the

solatium though in law they are not entitled but in equity they are entitled to the solatium for the reason that for 22 years arbitrator was not appointed to determine the market value. In support they relied upon the judgment of this Court in *Union of India v. Hari Krishan Khosla.* Therein this Court relied upon another judgment in *Harbans Singh v. Union of India.* In that judgment this Court said that having regard to the peculiar facts and circumstances of the present case and in view of the fact that the appointment of the arbitrator was not made by the Union of India for period of 16 years, this Court considered in equity to give solatium at the rate of 30 per cent of the amount of compensation and interest at the rate of 9 per cent per annum should be awarded to the appellants therein. In this case, the question of appointing the arbitrator would arise only when the market value offered was rejected by the claimants. The offer was made and rejected on 13.10.1961 and the arbitrator came to appoint on 22.9.1966 after five years. Under these circumstances, the claimants are entitled to solatium at the rate of 15 per cent on the market value. The

appellants did not challenge the rate of 15 per cent on the market value. The appellants did not challenge the rate of interest granted at 6 per cent. Accordingly, they are also entitled to the interest at the rate of 6 per cent per annum. The appeals are accordingly allowed. The appellants are entitled to the relief as stated above. No costs."

On the other hand the learned counsel for the respondents has argued that the claimants have been receiving the chakota/rental for the usage of the land right from 1950 without any protest and that the value of the land stood determined for the purpose of determination of the rentals accordingly, which have been duly noticed by the Arbitrator ranging from Rs.1200/- to Rs.1500/- per acre. No doubt the land was acquired in the year 1987 but the impediment thereon i.e. the land being in possession of the defence authorities under the provisions of the Act could not be ignored.

It has been contended that the land in question came within the mischief/territorial limit of the Municipal Corporation as alleged by the claimants, is not sustainable as no evidence has been produced by the claimants in this regard. The notification which may have been issued must have reflected the area to have fallen with the Municipal limit. But,

the area in question may have been excluded, which suffered the rigor of requisition under the Act. Thus, the benefit of the area having fallen within the municipal limit is not available to the claimants. Consequently, any reserved price which had been notified by the Municipal Corporation,Ludhiana, would be of no assistance to the claimants.

So far as the rate culled out from the instances is concerned, it would be dependent upon the instances produced on record by the respondents, which have been Exhibited as R-14 to R-22, which reflected that the rate which had been determined by the Special Land Acquisition Collector as compensation is higher than those rates. It is also contended that some of the instances related to the relevant year after the notification for acquisition had been issued i.e. March 9,1987.

The Arbitrator has correctly denied the grant of solatium and interest pursuant to the judgment rendered by the Hon'ble Supreme Court whereby it has been categorically held that there is no provision under the Act by virtue of which solatium and interest could be awarded and that the provisions of the Land Acquisition Act, where such provisions have been incorporated, are not applicable. So far as the discretion exercised by the Supreme Court in Hari Krishan Khosla's case

(supra) is concerned that was rendered in personam and not in rem. In any case, in the instant case the notification had been issued on March 9,1987 which was gazetted on the same date and that the Arbitrator was appointed on June 12,1990, thus, there was a gap of only three years, which would not entitle the claimants any interest accordingly. It is also the admitted case that subsequent notification was issued on January 8,1993 vide which the new Arbitrator had been appointed as the same was required and warranted in view of the facts and circumstances of the case and that the delay in this regard is not attributable to the respondents.

Thus, no case or cause is made out for seeking enhancement of compensation in regard to the the land in question. There is no doubt that the quantum of the area depends upon the need of the person/authority which has to acquire the land but that would not mean the rates specified in smaller chunk in regard to which sale deed is executed at a higher rate would be applicable mutatis mutandis. Thus, the principle of deduction of 1/3rd of the price so taken, is rightly and correctly applicable for determining the exact rate at which the compensation is payable for the area required for the purpose and the objects so defined. It is also the admitted case that the area has not been

acquired for the purpose of colonization , industrialization or any other business but the area has been acquired for maintaining defence installations accordingly, which are meant for the security of the country at large. It is nowhere the case of the claimants that the respondents have made profits out of the acquisition so made as none is sustainable. Resultantly, the appeal deserves to be dismissed.

Learned counsel for the respondent-Union of India has placed reliance upon *Hari Krishan Khosla's* case supra, with a specific reference to para nos.7,8,9,13-39,40,41,42,43-57,60,61,62-65-68. He has categorically contended that their Lordships of the Supreme Court have specifically observed that under the Act, the Arbitrator ought to determine the amount of compensation which appears to him to be just but he must have regard to sub-sections (2) and (3) of Section 8 of the Act. Thus, a property which remained under rigor of requisition and subsequently comes to be acquired, the compensation has to be awarded on the basis of the principles and the guidelines provided and enumerated in the Act.

Learned counsel for the respondents has further argued that the proceedings under the Act and the Land Acquisition Act are distinct from each other. The points of similarity and dissimilarity have been

considered by their Lordships of the Supreme Court in *Hari Krishan Khosla's* case supra and the pivotal similarity which has been noticed is that-- **there is a public purpose** and unless the public purpose is so culled out the acquisition cannot be resorted to.

The dissimilarity is that under the provisions of the Act the **act of requisition** comes in the first instance and that the Act takes away one of the most important rights emanating from the right of ownership i.e. "**right of possession and enjoyment"** of which the owner is deprived despite the fact that the ownership is not taken away. For this purpose, the compensation by way of rent or otherwise, as specified under the Act, is paid to the owner as per the provisions of the Act. It is further the contention that such requisition may not be specified for a particular period but is exercised under the umbrella of public purpose and that the subsequent acquisition thereof may be a continuing act on the part of the Government. Such status and situation would place the acquisition of the land in question at a different pedestal than the acquisition made by the Government under the Land Acquisition Act. In the instant case, as per the admission of the claimants, the requisition took place in the year 1950 and the acquisition took place in the year 1987 for the same public purpose. Thus the subsequent developments

which allegedly led to the enhancement of potential of the land in question, would be of no consequence.

Learned counsel has further contended that the granting of solatium and interest is conspicuously absent from the provisions of the Act. This approach of the legislature was challenged submitting it to be violative of Article 14 of the Constitution of India. This question was specifically considered by their Lordships of the Supreme Court in *Hari Krishan Khosla's* case supra and their Lordships have opined that the failure to provided solatium or interest under Section 8 sub-section (3) clause (A) of the Act does not make it mandatory to be provided. Further, it has been held that inclusion of the Act in the IXth Schedule of the Constitution of India would not be effected in any manner as the provisions contained therein cannot be said to have destroyed or damaged the basic structure of the Constitution. In this regard their Lordships have categorically observed that the provisions of the Act are not violative of Article 14 of the Constitution of India, therefore, the ratio of *Jagan Nath etc. vs. Authorised Officer Land Reforms and others*, (1971) 2 SCC 893 would squarely apply.

Learned counsel for the respondents has argued that the gap between the appointment of Arbitrator and the issuance of notification

under the Act is only three years and this period would not be sufficient for staking claim of solatium and/or interest, on the basis of the judgment rendered by the Hon'ble Supreme Court in *Hari Krishan Khosla's* case supra and *Prabhu Dyal's* case (supra) as the relief in those cases had been given per in curiam.

I have heard learned counsel for the parties and have also perused the paper book as also the evidence brought on record and have also gone through the judgments relied upon by the both the learned counsel for the parties.

The admitted fact is that the Arbitrator has fixed the rate of the acquired land situated at Village Dholewal at Rs.390/- per square yard. However, by applying the rule of deduction @ 33% for evaluation of the larger plots as compared to small plots of land and that by applying the ratio of the judgments cited at the bar before him, to which no contra authorities have been cited by the counsel for the claimants, the rate determined is Rs.260/- per square yard, which has been found to be quite reasonable. So far as solatium and interest is concerned, by considering the dicta of the Hon'ble Supreme Court rendered in *Hari Krishan Khosla's* case supra, no solatium or interest has been allowed. However, future interest @ 10% per annum has been awarded if the

payment is not made within a period of three months from the date of award i.e. September 8,1994.

Learned Arbitrator has accepted the contention relating to the utility, potentiality and the proximity of the acquired land to the other adjoining land. It may be noticed that Union of India has also filed appeals challenging the aforesaid award and have claimed that the rate has been incorrectly enhanced by the Arbitrator while accepting the utility, potentiality and proximity of the land in question. It has also been contended that the effect of requisition has not been kept in view by virtue of which the possessory right and the right to enjoy the land stood restricted for a period of almost 35 years. Thus, the principles and the dicta applied in regard to the land acquired under the Land Acquisition Act are not applicable mutatis mutandis vis a vis the utility, potentiality etc. The acquisition of the property under the Act and the Land Acquisition Act are distinct from each other though the similarity is only to the extent that upon acquisition, under both the statutes, the right of ownership is diluted extensively in one and is hypothetically created in the other. However, the rule of acquisition has to be applied by the State only for the achievement of public purpose, which is evident in the instant case. The dissimilarity is that the rule of requisition as provided

under the Act was applied almost 35 years prior to the acquisition under the Act and for all this period the owners were compensated by way of paying the rentals as permissible under law, which were duly accepted by the owners without any protest or reservation of their right.

I am afraid the rule of enhancement of utility and potentiality shall have to be applied differently by considering the facts and circumstances of each case. In the instant case the utility fell within the domain of Union of India by virtue of exercising the powers under the Act, which conferred the right upon the Union of India to require the land for usage of the State for the defence purposes, which public purpose is certainly much higher than the private purpose. However, this would not mean that the utility of the land by the real owners was lost for good, the State could have changed its mind in de-requisitioning the land as well, which of course would depend upon the facts and circumstances accordingly. If such act would have been committed, the utilisation of the land in question would have fallen back to the domain of the real owners accordingly. But if the development had not taken place- the potential of the land may not have arisen in any manner whatsoever and conversely if the development has taken place all along in that area/vicinity, the potential of the land in question would has

certainly risen. Conversely, the utility and potentiality in the hands of the Government rose commensurate to the market value, which has been duly considered by the Arbitrator. If the aforesaid rule is applied in *stricto senso* the rented premises of any kind and every kind would be directly affected by the rigor of utility for the owner and that may however, dilute the potentiality accordingly. This rule would be too dangerous to apply accordingly. The rentals of such utility are dependent upon the facts and circumstances prevailing at the particular places accordingly. For example, if a person is protected by virtue of statute as a tenant and the rent remains static accordingly, would that mean if the Government claims the land, the value shall be diminish accordingly. The answer is "no". The potential of the property in question has to be seen from the development which takes place in and around the place in question and the compensation becomes determinable by applying the rules and the precedents provided and law laid down accordingly. In the instant case learned Arbitrator has kept in view all such circumstances while determining the value of the property acquired by Union of India. The payment of the rental/compensation for the use and acquisition of the land in question by virtue of the statutory power would not affect the possessory right of enjoyment by the owner as the land in question did

not remain in illegal possession of the government or any other person. The user and enjoyment of the land through the tenancy by the owner is an accepted proposition. Thus, this argument of the learned counsel for the respondents is rejected.

Learned counsel for the appellants has submitted that the instances have not been considered by the Arbitrator while determining the rate for evaluating the compensation payable accordingly. I am afraid this contention is not sustainable. Learned Arbitrator has gone into the evidence and the instances produced on record. The claim has been made by the claimants generally at Rs.800/- per square yard, but such claim has not been substantiated by placing reliance upon the instances, whereas, the sale deeds exhibited as Exhibits R-14 to R-22 and the site plan exhibited as Annexure R-13 have come on record and the witness produced by the Union of India has categorically admitted that the land acquired is at a distance of 1-1/2 kilometers from Dholewal Chowk and is at about ½ kilometer from Sherpur Chowk. It has also been admitted that the assessment report Ex.P4 is based on the report of the Deputy Commissioner,Ludhiana and that their office did not take into consideration any sale deeds of the land in surrounding areas before giving the assessment report. He has further admitted that no

government auction having taken place in the area was taken into consideration before preparing the assessment report. Learned Arbitrator has taken into consideration all the facts and the sale deeds produced by the claimants which have been exhibited as Ex.PA to Ex. PF, which took place during the year 1985-1986, relating to Village Dholewal. The cumulative rate professed in all these sale deeds has been indicated as Rs.400/- per square yard. A reference has also been made to a communication dated March 12,1987 by the District Collector,Ludhiana, which has been appended as Annexure-F before the Arbitrator and that by taking into consideration the location, utility and potentiality of the acquired land, the proposed compensation would be decipherable at Rs.8 lacs per acre. In his report he has made a mention that the location, utility, and potentiality of the area is much higher from the average market value worked out from the sale deeds executed during the year 1985-86. However, Ministry of Defence, which itself had acquired the land, worked out the compensation at a much lesser rate i.e. Rs.2,55,170/- per acre and at that time did not take into consideration the assessment report of the Land Acquisition Collector, which is the competent authority. It is obvious that the person, who has to pay would always value the property in question at a lower rate and the person who

is owner of such property would always value the property at a higher rate. **The question always arises as to at what rate the person acquiring should pay and the person who is being divested of the property should receive.** In such cases the attendant circumstances, the development in the area which culminates into raising the potential has to be considered, the Forums are obligated to take the conscious and cautious decision accordingly. In the instant case the rate fixed by the Arbitrator is absolutely correct i.e. Rs.390/- per square yard. However, a deduction has been made @ 33% from the rate so accepted and the final rate has been fixed as Rs.260/- per square yard. In the discussion of the award, it does not transpire as to on what basis the deduction of 33% has been made. The only rule which has been applied is that the land acquired is a bigger chunk and the land indicated vis a vis the sale instances is much smaller in area. The deduction of 33% is not sustainable under any provision of the law, but it would depend upon the facts and circumstances of each case. In the instant case the sale deeds relied upon by Union of India, exhibited as Ex.R-14 to R-22, which have been taken into consideration for arriving at the rate of Rs.390/- per square yard pertains to areas measuring 0B-13B-2-1/2B, 100 square yards, 250 square yards, 0B-13B-2-1/2B, 589 square yards, 101-1/2

square yards, 0B-13B-2-1/2B, 0B-13B-2-1/2B and 8 kanals 0 marlas and which have been relied upon by the claimants, which have been exhibited as PA to PF, pertains to the area measuring 1366 sq. yards 1724 sq. yards, 425 sq. yards,425 sq. yards,425 sq. yards,425 sq. yards approximately.

I cannot lose sight of one important aspect that land has to be acquired by the government in a bigger lot as the same is dependent upon the public purpose for which the land has to be utilised. However, the owner of the land may own less or more, that has never been taken into consideration by the Arbitrator. For example, if the land owned by a particular owner is say 20 marlas or 35 marlas whereas the sale instance pertains to 11 marlas or may be 22 marlas, the rate would be applicable and deducible by applying the principles accordingly. No doubt the land of small chunk would also have to be acquired by the Government as the area needed by the Government for a particular public purpose may be much larger than the area owned by a particular owner. Such deductions would have to be applied if the area owned by each owner is examined accordingly. This exercise has not been made by the Arbitrator nor any one has projected the rule in this regard. Thus, the rule of deduction of 33% from the rate accepted by the Arbitrator is not sustainable under

law. Resultantly, the appeal is partly accepted to the extent that the rate fixed shall be Rs.390/- per square yard and not Rs.260/- per square yard.

Learned counsel for the appellants has further contended that in view of the dicta of the Hon'ble Supreme Court in *Hari Krishan Khosla's* case supra, solatium and/or interest is not payable as now has been provided under the provisions of the Act and that the rigor of Article 14 of the Constitution of India, has also been considered vis a vis Section 8, sub-section (3) clause (A) of the Act, and it has been held that the same does not suffer from the rigor of Article 14 of the Constitution of India. However, the Arbitrator was not appointed by the government for a period of more than three years and that some of the claimants had filed CWP No. 10703 of 1989, which was decided on November 15,1989, giving a direction to the respondents to appoint the Arbitrator and that the Arbitrator was appointed on June 12,1990 as the notification was issued on June 12,1990. But no proceedings took place and subsequently the appointment of Arbitrator was notified once all over again on January 8,1993 and the impugned award was rendered on September 8,1994. It is obvious that there has been inordinate delay of six years. Such delay has always been taken note of by the Hon'ble Supreme Court as is evident from *Hari Krishan Khosla's* case supra. The

delay was of 16 years and their Lordships have granted solatium and interest accordingly. Similarly, in *Prabhu Dyal's* case (supra), the Hon'ble Supreme Court granted solatium and interest for the delay of five years on the part of the government. In the instant case the delay is of six years and that too without any fault of the claimants. They have suffered the denial of compensation accordingly, pursuant to the decision which was to be rendered by the Arbitrator, though the same is also inadequate. Therefore, the claimants are entitled to solatium and/or interest pursuant to the dicta of the Hon'ble Supreme Court.

I have pondered over this matter and have considered all the aspects and have also gone through the judgments of the Hon'ble Supreme Court. I find that the requisition took place in the year 1950 and the owners were being paid the rental compensation for the use and possession of the land and the same was received by the owners without any protest or reservations. It is not clear from the record as no one has clarified as to whether such rentals were continuously paid up to the date of award or not. Admittedly, the possession was that of Union of India and they were obligated to pay the rentals accrued from time to time and that before paying the compensation so awarded and acquiring the land and divesting the claimants of the ownership absolutely. The

amount so required to be paid for use and occupation though not be termed as rental has to be termed as damages accordingly. In this situation, I am of the view that the claimants are not entitled to solatium and/or interest but they would be certainly entitled to the rentals/compensation as damages for use and occupation of the land till the date of the award and further a period of three months granted by the Arbitrator for paying the awarded amount. If such amount has not been paid, this amount shall carry interest @ 9% from the date when the amount fell due and till the date of the payment. If such payment has been made to such claimants the direction shall be ignored.

The appeals filed by the claimants are allowed as aforesaid and the award shall stand modified accordingly.

So far as the appeals filed by Union of India are concerned, I am satisfied that the learned Arbitrator has delved into all the aspects and has arrived at correct rate upon which the compensation payable has been determined. No case has been made out by the learned counsel for Union of India for granting any indulgence/interference in the findings returned and the rate so evaluated. However, the modification has been granted by me as has been discussed in the appeals filed by the claimants and that the award has been modified accordingly as indicated above.

Resultantly, the appeals filed by Union of India are dismissed with no order as to costs.

The case is pretty old as is evident from the date of the award made by the Arbitrator and also considering the pendency of the appeals before this Court for number of years, I am of the view that in view of modification made in the award, as aforesaid, the resultant effect deserves to be passed on to the claimants within a time frame. Resultantly, it is directed that the beneficial effect of the modified award, as aforesaid, be paid to the claimants with interest as indicated in the award from today by the concerned authorities upon verification within a period of six months or earlier from the date of receipt of this order.

July 5, 2006. **(J.S.Narang)**
rpj **Judge**